

SUBJECT INDEX

| | Page |
|--|------|
| STATEMENT OF THE CASE | 1 |
| ARGUMENT | 3 |
| I. The Arrest Without Warrant Was Valid | 4 |
| II. The Search Was Reasonable | 8 |
| A. An Immediate Search Was Necessary | 8 |
| B. The Search Was Reasonably Limited In Scope | 10 |
| REBUTTAL | 11 |
| CONCLUSION | 12 |
| CERTIFICATE | 13 |

TABLE OF AUTHORITIES

Cases

| | |
|---|------------|
| Agnello v. United States, 269 U.S. 20 (1925) | 11 |
| Brinegar v. United States, 338 U.S. 160 (1949) | 5 |
| Carroll v. United States, 267 U.S. 132 (1925) | 8 |
| Chimel v. California, 395 U.S. 752 (1969) | 4, 7, 8, 9 |
| Ker v. California, 374 U.S. 23 (1963) | 9 |
| McCray v. Illinois, 386 U.S. 300 (1967) | 5 |
| People v. Acosta, 213 Cal.App.2d 706, 29 Cal. Rptr. 241 (1963) | 7 |
| Peters v. New York, 392 U.S. 40, 66 (1968) | 11 |
| Preston v. United States, 376 U.S. 364 (1964) | 12 |

II

TABLE OF AUTHORITIES (Continued)

| | Page |
|--|-------|
| Schmerber v. California, 384 U.S. 757 (1966) | 9 |
| Shipley v. California, 395 U.S. 818 (1969) | 11 |
| Sibron v. New York, 392 U.S. 40, 66 (1968) | 5, 7 |
| State v. Johnson, 250 La. 85, 193 So.2d 794 (1967) | 7 |
| Stoner v. California, 376 U.S. 483 (1964) | 12 |
| Terry v. Ohio, 392 U.S. 1, 29-30 (1968) | 11 |
| United States v. Rabinowitz, 339 U.S. 56 (1950) .. | 9 |
| Warden v. Hayden, 387 U.S. 294, 310 (1967) | 8, 11 |
| Textbooks | |
| Davis, Federal Searches and Seizures, pp. 161-168 (1964) | 4 |
| Kaplan, Search and Seizure, A No-Man's Land in the Criminal Law, 49 Calif.L.Rev. 474, 502 (1961) | 10 |
| The Supreme Court, 1968 Term, 83 Harv.L. Rev. 7, 165 (1969) | 8 |

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1969

No. 727

DONALD J. VALE

versus

LOUISIANA

Appeal from the Supreme Court of Louisiana

BRIEF ON BEHALF OF THE STATE OF LOUISIANA,
APPELLEE OR RESPONDENT

STATEMENT OF THE CASE

Around noon on April 24, 1967 Officers Brady, Lammann and Soule of the Narcotics Division of the New Orleans Police Department drove in an unmarked car to 1826 Arts Street in New Orleans with two capiases for the arrest of Donald Vale in connection with possession of narcotic drugs (opium derivative).¹ A. 9-10, 20, 29. The officers parked their car in a cemetery on the corner and started watching the house at 1826 Arts, as they wanted to be sure Donald Vale was there before

¹These capiases were arrest warrants setting bail at \$50,000 in each instance, which had been issued in connection with two narcotics charges then pending against Donald Vale in the Orleans Parish District Attorney's office. A. 35, 78.

approaching the place. The officers were familiar with appellant's habit of moving back and forth between three or four addresses in order to avoid detection, and had learned that he might presently be found at 1826 Arts Street, the home of his mother and brother James. A. 10, 30-31, 69. About fifteen minutes after beginning their surveillance the officers saw a 1958 green Chevrolet drive up in front of the house, blow the horn, and then back into a parking spot right in front of 1826 Arts and again blow the horn. As the police watched, Donald Vale came out of the house, approached the Chevrolet, leaned in the window on the passenger side of the car, had a brief conversation with the driver, and walked back into the house. Within minutes Donald Vale came back out of the house, stood on the porch and looked up and down the street, went to the side of the car and again leaned in the window on the passenger side. A. 10-11, 20-21. Suspecting that a narcotics transaction was now taking place before their eyes, the three police officers began driving toward the green Chevrolet. As they approached, the officers recognized the driver of the car as Arizzio Saucier, a known narcotics user. A. 60. Meanwhile Donald Vale and Saucier became aware of the approach of the police car. Vale began to walk away from the Chevrolet toward the entrance of the house while Saucier put his right hand to his mouth, made a chewing motion, and attempted to drive off. However, the officers managed to block the Chevrolet with their car and immediately placed Donald Vale and Saucier under arrest and frisked them. This personal search was fruitless. A. 16, 21, 24, 29, 60-61, 82-84, 87-88.

Having arrested Donald Vale as he was attempting to reenter the house (the front door was open, A. 19), the officers informed the accused that because of the transaction which they had just seen take place they were going to search the residence for the narcotics they believed were there. A. 21, 23, 82. The three officers entered the house with Donald Vale and Saucier. In the pockets of 2 coats hanging in a clothes locker in a back bedroom of the house, within minutes after entering, the officers found capsules containing a white powder and white tablets, later shown to be heroin and dilaudid. A. 13, 22, 62-63. In the bathroom of the house, in the linen closet, the police seized a narcotics outfit and a spoon. A. 13, 22. Also, an examination of the arms of Donald Vale revealed trackmarks. A. 97-98.

Donald Vale was charged in a bill of information (along with his brother James, who lived in the house) with possession of Heroin. See La. R.S. 40:962; A. 5-6. He pleaded not guilty, was tried, found guilty as charged, and sentenced to fifteen years in the Louisiana Penitentiary as a second offender under La. R.S. 15:529.1; A. 5. The accused appealed to the Louisiana Supreme Court, which affirmed his conviction. He then appealed to this Honorable Court, which consented to review the search and seizure question under either its appellate or certiorari jurisdiction. A. 134.

ARGUMENT

It is the State of Louisiana's position that the warrantless search in the instant case was reasonable under

the Fourth Amendment to the United States Constitution because the arrest was unforeseeable and hence no search warrant could have been procured by the police in advance, and furthermore, as it was necessary to seize the narcotics in the house immediately to prevent their removal or destruction, there was no time for the officers to secure a search warrant following the arrest. Under Louisiana's view of the issue posed here for decision, it is immaterial whether *Chimel v. California*, 395 U.S. 752 (1969), is to be given retroactive effect or not, because the search in the instant proceedings fits into a special category which is unaffected by *Chimel*. That is, the search involved here took place in an emergency situation, and the exceptional and compelling circumstances preceding the arrest made the search reasonable even though it was warrantless and was not confined to the immediate area into which the arrested man might reach. For a discussion of situations in which it is impractical to obtain a search warrant, see Davis, *Federal Searches and Seizures*, pp. 161-168 (1964).

I. The Arrest Without Warrant Was Valid

As to the police officers in this case concededly had no warrant to search the house at 1826 Arts Street, the State of Louisiana has from the beginning relied on the arrest without warrant of Donald Vale, which occurred at the front steps of the house, to validate the incidental search of the premises immediately following that arrest.

Under Article 213 of the Louisiana Code of Criminal Procedure a police officer may, without a warrant, arrest a person when the officer has reasonable cause to believe that the person to be arrested has committed an offense. It is settled that reasonable cause to make an arrest without a warrant exists whenever the facts and circumstances within the arresting officer's knowledge, and of which he has trustworthy information, are sufficient in themselves to justify a man of average caution in the belief that the person he is arresting has committed a crime. Further, in determining compliance with this standard of reasonable cause, the degree and type of proof required for conviction is not necessary. The proof needed to satisfy the requirement of reasonable cause for a warrantless arrest is commensurate with the term itself — that is, the probabilities and practical considerations of everyday life on which reasonable men can be expected to act. *Brinegar v. United States*, 338 U.S. 160 (1949); *McCray v. Illinois*, 386 U.S. 300 (1967); *Sibron v. New York*, 392 U.S. 40, 66 (1968) (Peters' case).

The record in the present case establishes the following pertinent facts:² On the date in question Officers Brady, Laumann and Soule of the Narcotics Division of the New Orleans Police Department were looking for Donald Vale in order to take Vale into custody under two capias which had been issued by the Criminal District Court for the Parish of Orleans, and bring Vale before the court to answer 2 charges of violating

²These facts are not in dispute, the Vale brothers having offered no evidence, either at the hearing of the Motion to Suppress or at the trial, to contradict the testimony of the police officers.

La. R.S. 40:962 relative to possession of narcotic drugs (opium derivatives) which were already pending against him. A. 10. Officer Soule knew Donald Vale well, having arrested him twice the preceding month in connection with narcotics violations. A. 29-30. The officers drove in an unmarked car to 1826 Arts Street, where they had been informed that Donald Vale was staying. (The two pending narcotics charges involved other addresses.) Not wanting to make their presence known until they were sure that the man they sought was at 1826 Arts Street, the three officers parked their car in the 1700 block of Arts and began watching the house in question from various positions. A. 29, 67. In about fifteen minutes the police saw a 1958 green Chevrolet drive up in front of 1826 Arts, toot its horn, park in front of the house, and toot again. A. 10-11, 67. They then observed Donald Vale come out of the house, approach the Chevrolet, stick his head in the window on the passenger side of the car, engage in a brief conversation with the occupant of the Chevrolet, return inside the house, reappear in a few seconds, and while on the porch and walking down the steps look up and down the street to see if anyone was coming, walk to the Chevrolet, and put his head back inside the window. A. 29. At this moment the watching officers decided that a narcotics sale was probably taking place, and they began driving to where Donald Vale was standing by the Chevrolet. When the officers were about three car lengths away Donald Vale looked up and recognized them and immediately turned and walked toward the house. The driver of the Chevrolet, whom the police recognized as Arizzio Saucier, a known narcotics user, tried to drive away, but was blocked by the police

7

vehicle. Thereupon Saucier placed something in his mouth with his right hand, chewed briefly and swallowed. A. 11, 21, 29, 84. It is common knowledge that narcotic possessors when caught attempt to destroy the evidence by swallowing it;³ furtive actions and flight at the approach of law officers are strong indications of guilt.⁴ The three officers jumped out of their car. Officer Brady arrested Saucier. Officers Laumann and Soule arrested Donald Vale as he was attempting to reenter the house (just as he reached the front steps). A. 21, 29, 60-61, 72-73, 88.

The State of Louisiana believes that the facts and circumstances within the officers' knowledge when they arrested Donald Vale at the front steps of 1826 Arts Street gave them reasonable cause to believe that Vale had transferred narcotics to the driver of the green Chevrolet. Therefore, Donald Vale's arrest without warrant was valid under Article 213 of the Louisiana Code of Criminal Procedure and the jurisprudence of this Court.

Having made a legal arrest without warrant, under the established jurisprudence of this Court the officers had the right, without a search warrant, to conduct a contemporaneous search of the place where the arrest occurred, the only question being whether the scope of the incidental search was reasonable. See *Preston v. United States*, 376 U.S. 364 (1964); *Chimel v. California*, 395 U.S. 752 (1969).

³See *People v. Acosta*, 213 Cal.App.2d 706, 29 Cal.Rptr. 241 (1963); *State v. Johnson*, 250 La. 85, 193 So.2d 794 (1967) ("It is virtually common knowledge that narcotics possessors constantly, when apprehended, attempt to destroy the evidence by swallowing it.")

⁴See *Sibron v. New York*, 392 U.S. 40, 66 (1968).

II. The Search Was Reasonable

A. An Immediate Search Was Necessary

This Court has already held on several occasions that if police officers discover probable cause to search for evidence which may be destroyed before there is time to secure a warrant, they may conduct the search without one. See *The Supreme Court, 1968 Term*, 83 Harv. L.Rev. 7, 165 (1969). By analogy, Louisiana submits that for the same reason the scope of a search incident to a legal arrest may be extended beyond the normally approved limits.

For example, in *Carroll v. United States*, 267 U.S. 132 (1925), this Court permitted a warrantless search, incident to an arrest, of a car on the highway, pointing out that the vehicle could easily be moved from the jurisdiction before a warrant could issue, and that the Fourth Amendment does not denounce all searches and seizures, but only unreasonable ones. In *Chimel v. California*, 395 U.S. 752 (1969), *Carroll* was cited with approval. See footnote 9 at 395 U.S. 764.

In *Warden v. Hayden*, 387 U.S. 294 (1967), the police were informed that an armed robbery had taken place, and that the suspect had entered 2111 Cocoa Lane less than five minutes before they reached it. This Court approved the officers' warrantless entry into the house and search thereof, both prior to and following the felon's arrest, pointing out that speed was essential and that exigent circumstances made lawful the search without warrant.

Also pertinent herein is *Schmerber v. California*, 384 U.S. 757 (1966), in which this Court held that the arresting officer did not have to procure a warrant before proceeding to have a blood sample withdrawn from the arrested man's body in order to have it chemically analysed for the presence of alcohol, the basis of the decision being that the percentage of alcohol in the blood begins to diminish shortly after drinking stops, the evidence of alcoholic content in the blood would disappear because of natural bodily functions, within a short time, and thus there was no time to seek out a magistrate and secure a warrant. Furthermore, this Court noted that the blood test on Schmerber was performed in a reasonable manner.

And *Ker v. California*, 374 U.S. 23 (1963), is strong authority for the instant search, in the respectful view of Louisiana. There this Court upheld an unannounced entry with a passkey and a warrantless search of an apartment on the ground that time was of the essence due to the fact that Ker was in possession of narcotics, which can be quickly disposed of before a warrant can be obtained. It is pertinent to note that in *Ker* the validity of the search was not rested on *Rabinowitz*, 339 U.S. 56 (1950) (which was overruled in *Chimel*), but on the presence of compelling circumstances — i.e., the highly volatile nature of the narcotic evidence to be seized.

The State of Louisiana believes that the arrest of Donald Vale in the instant case created an emergency situation making it impracticable to obtain a warrant before searching the house at 1826 Arts Street for narcotics. It must be remembered that the arresting officers knew that this house was the residence of

Donald's mother and his brother James, and that Donald only used it intermittently as a base for his selling operations. See A. 30-31, 69. Having seen what they thought was a sale of narcotics by Donald Vale to Saucier, and believing from what they observed that there were narcotics in the house, the officers entered the residence as quickly as possible through the open door (left ajar by Donald when he went to the car to deliver the drugs to Saucier, A. 19), fearing that Mrs. Vale and James were at that very moment in the bathroom washing the narcotics down the drain.⁵ See A. 25, 82. As a practical matter, there was no time for the police officers to secure a search warrant. The drugs had to be seized immediately or not at all. (The record herein shows that Mrs. Vale and James returned to the house minutes after the arrest occurred. A. 26.)

B. The Search Was Reasonably Limited In Scope.

The record in this case reveals that Officers Laumann, Brady and Soule did not engage in an unrestrained, exploratory, prolonged examination of the Vales' personal effects. On the contrary, the officers first looked quickly under beds and in the bathroom and back yard to see if the drugs were being hidden or destroyed, and then converged on the back bedroom, which appeared to them to be a man's room (Mrs. Vale's bedroom was near the front of the house, A. 69) and looked in the clothes locker and attached chest of drawers there. Within minutes after entering the house

⁵It has been pointed out that the development of indoor plumbing has greatly facilitated the destruction of evidence. See Kaplan, *Search and Seizure: A No-Man's Land in the Criminal Law*, 49 Calif. L.Rev. 474, 502 (1961).

the officers found the heroin and dilaudid they were seeking, in the pockets of various coats hanging in the clothes locker in this back bedroom. A. 12, 21, 26, 61, 62, 65, 74, 79. Thus in the instant case we have no general exploratory search, no rummaging through desk and dresser drawers and other closed areas. Rather, the search here at issue was brief, cursory, and strictly tied to and justified by the circumstances which rendered its initiation permissible. Compare *Terry v. Ohio*, 392 U.S. 1, 29-30 (1968); *Warren v. Hayden*, 387 U.S. 294, 310 (1967) (Concurring opinion of Fortas, J.); *Peters v. New York*, 392 U.S. 40, 66 (1968).

REBUTTAL

Shipley v. California, 395 U.S. 818 (1969), relied on by appellant herein, is easily distinguishable from the case at bar. It is true that in *Shipley*, as here, the accused was arrested just as he was about to enter his residence, but there all resemblance between the two cases ends. In *Shipley*, unlike the present proceeding, the police officers did not see the accused committing the crime while using the house as a base of operations; nor were the officers there suddenly confronted with an emergency situation involving narcotics; nor was the search there justifiable on the ground that its purpose was to prevent the destruction of evidence, as a prior search of the residence had already alerted the wife of the accused. Moreover, there was time in *Shipley* to obtain a search warrant during the "stake out".

Agnello v. United States, 269 U.S. 20 (1925), is, if anything, authority for the instant search. There revenue agents looking through the window of Alba's house saw

an apparent sale of narcotics take place therein. Upon consummation of the sale the agents rushed into Alba's house, arrested Agnello and others, and seized the packages of cocaine lying on the table where the transaction took place. This Court did not question the legality of the arrests or of the search and seizure made at the home of Alba, but struck down as unreasonable (too remote in time and place) the search of Agnello's house several blocks distant from the scene of the arrest, which search was made by some of the revenue agents at a later time, while other agents were taking the arrested men to the police station. Accord: *Stoner v. California*, 376 U.S. 483 (1964) ("a search can be incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest."); *Preston v. United States*, 376 U.S. 364 (1964).

The search in the present proceeding was contemporaneous with the arrest of Donald Vale and was confined to the vicinity of that arrest—the house into which Vale had gone to secure the narcotics he sold to Saucier and in front of which he was arrested. The State of Louisiana suggests to this Court that under the totality of the circumstances surrounding the arrest herein the search of the residence was entirely reasonable under the Fourth Amendment.

CONCLUSION

The State of Louisiana respectfully requests that this Honorable Court affirm the judgment of the Supreme Court of Louisiana herein.

JACK P. F. GREMILLION,
ATTORNEY GENERAL OF
LOUISIANA

JIM GARRISON,
DISTRICT ATTORNEY FOR
THE PARISH OF ORLEANS

LOUISE KORNS,
ASSISTANT DISTRICT
ATTORNEY FOR THE
PARISH OF ORLEANS

CERTIFICATE

I certify that copies of this brief have been mailed to:

Eberhard P. Deutsch, Esq.
Rene H. Himel, Jr., Esq.
Overton T. Harrington, Jr., Esq.
Deutsch, Kerrigan & Stiles
Hibernia Bank Building
New Orleans, Louisiana - 70112

Attorneys for Donald Vale

LOUISE KORNS (Mrs.)
Assistant District Attorney
Parish of Orleans